

### **REMARKS/ARGUMENTS**

Applicants respectfully request reconsideration of this application and reconsideration of the Office Action dated November 7, 2008. Upon entry of this Amendment, claims 1-30, 32, and 34-48 will be pending in this application. Claims 1, 12, 18, 24, 30, 34, and 41 have been amended.

Applicants believe that no fees are due to permit entry and consideration of this Amendment. The Commissioner is authorized to debit our Deposit Account No. 19-0733 for any fees that are not accounted for in these papers, but may otherwise be required to maintain the pending status of this application.

***I. The Office Rejected Claims 1-4, 6, 7, 12-15, 17-21, 41-43, and 45 Under 35 U.S.C. § 102(b) based on Buonassissi***

The Office rejected claims 1-4, 6, 7, 12-15, 17-21, 41-43, and 45 under 35 U.S.C. § 102(b) as being anticipated by Buonassissi, U.S. Patent No. 4,601,067 (hereinafter “Buonassissi”). Applicants’ independent claims 1, 12, and 41, as amended, contain elements that are not taught by Buonassissi.

Buonassissi teaches a vest for regulating the temperature of a wearer’s torso having a chest area and a back area with an adjustable securing mechanism for attaching the vest to a wearer. The chest area and the back area have a plurality of cavities for receiving inserts that moderate the body temperature of a wearer. The chest area and the back area are attached at their respective top edges near the shoulder of a wearer. The side edges of the chest area and the back area are secured to each other by adjustable buckles that permit the edges of the front area and the back area to be spaced apart at various distances to accommodate wearers of various sizes. For example, the buckles can be adjusted to the size of a relatively small wearer’s torso so that the cavities on the chest area and the back area extend around the sides of the wearer’s torso.

In contrast, Applicants’ independent claims 1 and 12 recite an article of apparel comprising a torso region that has (1) “a chest area, a back area opposite the chest area, two opposing side areas that interconnect at least one side of the back area with at least one side of the chest area;” and (2) “a plurality of cavities distributed throughout the torso region, the

cavities being positioned in the chest area, in the back area, around each of the side areas.” Applicants’ independent claim 41 recites, “a torso region for covering at least a portion of a torso of the individual, the torso region having a chest area, a back area opposite the chest area, two opposing side areas that interconnect at least one side of the back area with at least one side of the chest area...a plurality of thermal inserts distributed throughout the torso region, the thermal inserts being positioned in the chest area, in the back area, around each of the opposing side areas.”

Buonassissi does not describe side areas that connect the chest area and the back area, as recited in Applicants’ independent claims 1, 12, and 41. Further, Buonassissi does not describe an article of apparel having cavities that are positioned in the side areas and that extend around the torso region. The Buonassissi vest has a chest area and a back area, but it simply does not have a side area including cavities and/or thermal inserts interconnecting the chest area and the back area. The chest area and the back area of Buonassissi are secured together only by the adjustable buckles and straps. The Office asserted that the Buonassissi vest may be configured so that the chest and back areas extend around the sides of a wearer and contact one another if it is adjusted to a wearer of sufficiently small size. *See* the Final Office Action at pg. 3. Applicants respectfully assert that this statement is factually inaccurate because the physical presence of the buckles (26) would prevent direct contact along the edges of the back and chest areas of the Buonassissi vest. Nonetheless, even if contact were to occur in the configuration suggested in the Final Office Action, (which Applicants do not concede) the result would still not result in Applicants’ claimed invention because this resulting structure still would not include side areas interconnecting the front and rear areas, as recited in Applicants’ independent claims 1, 12, and 41. Because the claimed side areas are not present in the configuration of Buonassissi that is asserted by the Office, this configuration also lacks the claimed cavities and/or thermal inserts provided in these side areas. Therefore, Buonassissi does not describe each element of the claimed invention and thus does not anticipate Applicants’ independent claims 1, 12, and 41 or their corresponding dependent claims 2-4, 6, 7, 13-15, 17-21, 42, 43, and 45. Applicants respectfully request that the Office withdraw the anticipation rejection of these claims based on Buonassissi and earnestly solicit allowance of the same.

***II. The Office Rejected Claims 5, 16, 30, 31, and 44 Under 35 U.S.C. § 103 Based Upon Buonassissi in View of Steele, et al.***

The Office rejected claims 5, 16, 30, 31, and 44 under 35 U.S.C. § 103 as being unpatentable over Buonassissi in view of Steele, et al., U.S. Patent No. 5,146,625 (hereinafter “Steele”). Applicants’ claims 5, 16, 30, 31, and 44 contain elements that are not taught or suggested by Buonassissi in view of Steele. As discussed in detail above, Buonassissi does not teach or suggest side areas that connect the chest area and the back area, and thus, Buonassissi inherently cannot describe side areas having cavities that extend around a torso region of the article of apparel, as recited in Applicants’ independent claims 1, 12, and 41. Steele does not cure these deficiencies. Steele describes a cooling vest having three cavities positioned in the chest area into which cooling packs may be inserted. Steele further describes cooling packs having multiple chambers. The Office relied on the Steele reference to describe a vest having cooling packs with multiple chambers. *See* the November 7, 2008, Office Action, at page 4. Steele does not describe a cavity that extends around the side area of the torso region of an article of apparel and thus does not cure the deficiency of Buonassissi. Buonassissi in view of Steele does not teach every element of the claimed invention and thus does not render unpatentable Applicants’ independent claims 1, 12, and 41 or their corresponding dependent claims 5, 16, 30, 31, and 44. Applicants respectfully request that the Office withdraw the rejection of Applicants’ claims 5, 16, 30, 31, and 44 and earnestly solicit allowance of the same.

***III. The Office Rejected Claims 8-11, 22-25, 27-29, 34-40, and 46-48 Under 35 U.S.C. § 103 Based on Buonassissi in View of the Federal Trade Commission Rules***

The Office rejected claims 8-11, 22-25, 27-29, 34-40, and 46-48 under 35 U.S.C. § 103 as being unpatentable over Buonassissi in view of the Federal Trade Commission Rules. As discussed in detail above, Buonassissi does not teach or suggest side areas that connect the chest area and the back area, and thus, Buonassissi inherently cannot describe side areas having cavities that extend around a torso region of an individual, as recited in Applicants’ independent claims 1, 12, 24, 34, and 41. The Federal Trade Commission Rules do not cure this deficiency. The Federal Trade Commission Rules describe rules for placing instructions in a garment for

describing how the garment should be used and how it should be care for. The Office relied upon the Federal Trade Commission's Rules to teach or suggest "pictorial instructions that are permanently secured to the interior of the garment." *See id.* at pages 4-5. The Federal Trade Commission Rules do not describe any articles of apparel having cavities, which is the deficiency of Buonassissi. Therefore, Buonassissi in view of the Federal Trade Commission Rules do not describe elements of the inventions described in Applicants' independent claims 1, 12, 24, 34, and 41, and their corresponding dependent claims 8-11, 22, 23, 25, 27-29, 35-40, and 46-48, respectively. Thus, Buonassissi in view of the Federal Trade Commission Rules do not render unpatentable the inventions recited in these claims. Applicants respectfully request that the Office withdraw the rejection of claims 8-11, 22-25, 27-29, 34-40, and 46-48 and solicit allowance of the same.

***IV. The Office Rejected Claims 16, 26, and 44 Under 35 U.S.C. § 103 Based on Buonassissi in View of the Federal Trade Commission Rules and Further in View of Steele***

The Office rejected claims 16, 26, and 44 under 35 U.S.C. § 103 as being unpatentable over Buonassissi in view of the Federal Trade Commission Rules and further in view of Steele. As explained in detail above, none of these references describe an article of apparel having side areas that connect the chest area and the back area of an article of apparel, and thus, these references inherently cannot describe side areas having cavities that extend around a torso region of an individual, as recited in Applicants' independent claims 12, 24, and 41 or their corresponding dependent claims 16, 26, and 44, respectively. Applicants respectfully request that the Office withdraw the rejection of claims 16, 26, and 44 and solicit allowance of the same.

***V. Conclusion***

Nothing in this Amendment should be construed as an admission that Applicants agree with or acquiesce on the various grounds of rejection that were raised by the Office in the November 7, 2008, Office Action. Rather, by this Amendment, Applicants have presented various claim amendments in an effort to expedite prosecution and to facilitate the allowance of this application. The claim changes made in this Amendment are presented without prejudice or

disclaimer, and Applicants reserve all rights with respect to the originally and/or previously claimed subject matter, including the right to pursue claims of the same or similar scope in the future (*e.g.*, in a continuing application).

If the Examiner believes that a telephone conference or a personal interview will be useful to advance the prosecution of this application and/or to place the application in condition for allowance, she is invited to contact the undersigned attorney.

All rejections having been fully addressed, Applicants respectfully submit that this application is in condition for allowance and respectfully solicit notification of the same.

Respectfully submitted,

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